

Applicants note with appreciation the fact that the Action states that claims 15 and 21 would be allowable if rewritten. However, for at least the reasons set forth below, Applicants respectfully submit that the remaining claims are also in condition for allowance.

The Office Action (Action) objects to the drawings under 37 CFR §1.83(a) because the drawings do not show every feature of the invention specified in claims 13, 15, 16, 17, 19, 21 and 22. Applicants submit herewith Figs. 10 through 15, which illustrate the subject matter recited in claims 13, 15, 16, 17, 19, 21 and 22. Specifically, the subject matter of claim 13 is illustrated in Fig. 10, claim 15 in Fig. 11, claims 16 and 17 in Fig. 12, claim 19 in Fig. 13, claim 21 in Fig. 14 and claim 22 in Fig. 15. In addition, the specification has been amended to include a description of Figs. 10 through 15. It is respectfully submitted that no new matter has been added by the inclusion of these figures, as the subject matter depicted and described was disclosed in the original application as filed.

Claims 5, 6, 10 through 12, 17, 18, 23 and 24 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that applicants regard as the invention.

With respect to claims 5, 17 and 23, the Action contends that the language "corresponds to a separate one of said..." is confusing, thus the claims are indefinite. Applicants respectfully submit that claims 5, 17 and 23 have been amended to clearly recite the subject matter that the Applicants regard as the invention. Therefore, claims 5, 17 and 23 are definite.

With respect to claims 6, 18 and 24, the Action contends that "grooves" and "louvers" would inherently result in ribs being formed, yet the claims exclude ribs. Applicants respectfully disagree with the Action's contention.

Applicants note that the subject matter recited in claim 6 has been included in claim 1, therefore, claim 6 has been canceled. Therefore the rejection of claim 6 is now moot.

Webster's Ninth New Collegiate Dictionary defines a rib as "an elongated ridge". U.S. Patent No. 4,536,178 to Lichstein et al. (Lichstein) discloses a plurality of spaced apart ribs. Clearly, upon reviewing at least Figs. 1, 2 and 5 of the Lichstein patent, a rib is in fact a solid, rounded raised elongated ridge. The rib is raised above the surface plane of the material in which the rib is formed. It is respectfully

submitted that one skilled in the art of tampons would clearly understand what is meant by a rib, especially in view of the dictionary definition and disclosure in Lichstein.

Webster's Ninth New Collegiate Dictionary defines a groove as "a long narrow channel or depression". Clearly, a long narrow channel or depression is not the same as a rib, as defined above. Moreover, contrary to the Action's contention that an area between two grooves constitutes a rib, as noted above, a rib is formed such that it is raised above the surface plane of the material in which it is formed. To the contrary, the area between two grooves is in fact on the same plane as the surface in which the grooves are formed, which does not define a rib.

The Dictionary of Scientific and Technical Terms defines a louver as "any arrangement of fixed or adjustable slat-like openings...". Unlike a rib, which is a raised elongate solid structure, a louver has an opening. In addition, a louver does not have to be elongate, like a rib. Therefore, Applicants respectfully submit that a louver cannot be a rib.

Therefore, grooves and louvers are clearly not ribs, nor do the formation of grooves and/or louvers inherently result in the formation of ribs. Therefore, claims 18 and 24 are definite.

With respect to claim 10, the Action contends that the term "of said...surface" makes no sense. Please note that claim 10 has been amended to clearly and definitely recite the subject matter Applicants regard as the invention.

With respect to claim 11, the Action notes a combination/subcombination problem since the independent claim from which claim 11 depends does not recite a plunger as part of its scope. Applicants respectfully submit that claim 11 has been amended to overcome this problem. Claim 11 now clearly and definitely recites the feature of a plunger.

Claims 5, 10, 11, 17 and 23 have been amended as a matter of form. It is respectfully submitted that these amendments are neither narrowing nor made for substantial reasons related to patentability as defined by the Court of Appeals for the Federal Circuit (CAFC) in Festo Corporation v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd., 95-1066 (Fed. Cir. 2000). Therefore, the amendments to claims 5, 10, 11, 17 and 23 do not create prosecution history estoppel and, as such, the doctrine of

equivalents is available for all of the elements of these claims.

Claims 1 through 6, 8 through 14, 16 through 20, and 22 through 24 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,536,178 to Lichstein et al. (Lichstein).

Lichstein discloses a tampon applicator with a tubular barrel adapted to house a tampon pledget and accommodate a slidable tubular plunger. The barrel includes a rear portion having two diametrically opposed, substantially flattened surfaces with gripping ribs thereon. The rear portion also includes an angled transitional shoulder that has a reduced diameter relative to the front portion of the barrel.

Claim 1 discloses a tampon applicator having a barrel adapted to house a pledget therein and to receive a plunger therein. The barrel has a fingergrip area adapted to partially house and engage the plunger. The fingergrip area has at least one substantially flattened surface with at least one gripping structure selected from the group consisting of embossments, slits, grooves, louvers, perforations, lances, high wet coefficient of friction material, pressure sensitive adhesive,

and any combinations thereof. The fingergrip area has a reduced diameter relative to the barrel. The at least one substantially flattened surface and the at least one gripping structure provide gripping ability to overcome ejection forces applied to the barrel by the pledget and/or the plunger.

It is respectfully submitted that Lichstein fails to disclose a tampon applicator having at least one substantially flattened surface with at least one gripping structure selected from the group recited in claim 1. To the contrary, Lichstein only discloses a plurality of spaced apart ribs or treads on surfaces 30, which form the gripping structures. Applicants disagree with the Action's contention that the concavity or depression disclosed in col. 4, lines 14-24 of Lichstein defines the gripping structure. It is the ribs or treads disclosed in Lichstein (col. 4, line 19) that define the gripping structure, which are clearly absent in the presently claimed invention.

Claim 3 recites the tampon applicator of claim 1, wherein the fingergrip area has an odd number of substantially flattened surfaces. At least one of the substantially flattened surfaces is diametrically opposed to a pair of adjoining substantially flattened surfaces.

Applicants respectfully disagrees with the Action's contention that the very end of the barrel itself in Lichstein defines a third flat surface. The present specification defines the substantially flattened surfaces 30 as forming a fingergrasp area on the receiving end of the barrel (page 10, lines 7 through 15 and Figs. 1 through 3). Clearly, the substantially flattened surfaces recited in claim 3 do not include the flat surface on the very end of the barrel itself, as contended by the Action.

In addition, Lichstein clearly fails to disclose a tampon applicator having at least one of the substantially flattened surfaces diametrically opposed to a pair of adjoined substantially flattened surfaces, as recited in claim 3. The flat surface at the very end of the Lichstein applicator is not diametrically opposed to any substantially flattened surface on the applicator.

Claim 6 has been canceled by this amendment. Therefore, the rejection of claim 6 is now moot.

Claim 8 recites the tampon applicator of claim 1, wherein at least one gripping structure is depressed below the at least one substantially flattened surface.

Claim 9 recites the tampon applicator of claim 1, wherein the at least one gripping structure is aligned with an outer surface of the at least one substantially flattened surface.

As noted above, Lichstein discloses ribs or treads, both of which clearly extend above the substantially flattened surface. Therefore, Lichstein fails to disclose any gripping structure that is depressed below the at least one substantially flattened surface, as recited in claim 8, or aligned with the at least one substantially flattened surface, as recited in claim 9.

Claim 13 is directed to a tampon applicator having a barrel adapted to house a pledget therein, the barrel having a fingergrip area adapted to partially house and engage the plunger. The fingergrip area has at least one convex surface with at least one gripping structure other than a rib. The fingergrip area has a reduced diameter relative to the barrel. The at least one convex surface and the at least one gripping structure provide gripping ability to overcome ejection forces applied to the barrel by the pledget and/or the plunger.

Lichstein fails to disclose a fingergrip area having at least one convex surface with at least one gripping structure

other than a rib. Applicants respectfully assert that the rear portion 32 of the Lichstein applicator are not convex gripping areas, as recited in claim 13. Clearly, as depicted in Fig. 9 of the present application, in conjunction with the specification at page 14, lines 12-16, surfaces 30 are formed with convex surfaces. The surfaces 30 are not the rear portion 32, as disclosed in both the present application and Lichstein.

Claim 14 recites the tampon applicator of claim 13, wherein the fingergrasp area has at least one pair of diametrically opposed, convex surfaces.

As set forth above for claim 13, Lichstein clearly fails to disclose an applicator with a fingergrasp area with any convex surface. Therefore, it follows that Lichstein fails to disclose the tampon applicator recited in claim 14.

Claim 18 recites the tampon applicator of claim 13, wherein the at least one gripping structure is selected from the group consisting of embossments, protuberances other than ribs, slits, grooves, louvers, perforations, lances, abrasive media, high wet coefficient of friction materials, pressure sensitive adhesives, and any combinations thereof.

The Action contends that surfaces 30 and 34 of the Lichstein patent define a groove or an embossment with respect to the remainder of the barrel. Applicants respectfully assert that surfaces 34 are recited in claim 16 of the present application. Therefore, the at least one gripping structure recited in claim 18 is clearly one that is separate from the angled shoulder surfaces 34, recited in claim 16. As such, Lichstein fails to disclose a groove or an embossment on the fingergrip area.

Claim 19 is directed to a tampon applicator having a barrel adapted to house a pledget therein and to receive a plunger therein. The barrel has a fingergrip area adapted to partially house and engage the plunger. The fingergrip area has at least one concave surface with at least one gripping structure. The at least one gripping structure is selected from the group consisting of embossments, protuberances other than ribs, slits, grooves, louvers, perforations, lances, abrasive media, high wet coefficient of friction materials, pressure sensitive adhesives, and any combinations thereof. The fingergrip has a reduced diameter relative to the barrel. The at least one concave surface and the at least one gripping structure provide gripping ability to overcome ejection forces applied to the barrel by the pledget and/or plunger.

It is respectfully submitted that Lichstein fails to disclose a tampon applicator with a finger grip area having at least one gripping structure selected from the claimed Markush group. The Action's contention that the flat surfaces 30 along with the angled shoulders 34 are a gripping structure, as recited by claim 19, is unfounded. The at least one gripping structure of the present invention is clearly a separate feature from both concave surfaces 30 and angled shoulders 34 of Lichstein. The at least one gripping structure is an additional structure on concave surfaces 30, therefore, the concave surfaces 30 cannot be a gripping structure as defined by the present invention. In addition, angled shoulder surfaces 34 are recited in present claim 22, which depends from claim 19. Clearly, the angled shoulder surfaces cannot be the at least one gripping structure recited in claim 19, contrary to the Action's contention.

The features of claim 24 have been incorporated into independent claim 19, therefore, claim 24 has been canceled by this amendment. The rejection of claim 24 is thus rendered moot.

Claims 1 and 7 are rejected under 35 U.S.C. §103(a) as being unpatentable over Lichstein in view of U.S. Patent No. 3,575,169 to Voss.

Claim 1 is set forth above. Lichstein is also set forth above. Voss is directed to a tampon applicator barrel with any number of different arrangements of elements secured to the barrel. The elements are formed separately from the barrel and then applied to the barrel surface by means such as adhesive and interference fit. The different arrangements disclosed include rectangles (Fig. 2), dots (Fig. 3), abrasive material (Fig. 4), wavy ribs (Figs. 5 and 7), and ribs (Fig. 6).

It is respectfully submitted that neither Lichstein nor Voss, either alone or in combination, disclose a tampon applicator having a fingergrasp with at least one gripping structure from the claimed Markush Group recited in claim 1. As noted by the Action, Lichstein does not disclose the fingergrasp area as being other than ribs.

While Voss does disclose elements that, when affixed to the barrel, result in raised structures, Voss clearly does not disclose embossments, slits, grooves, louvers, perforations,

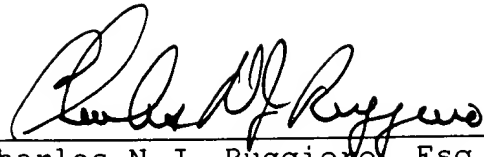
lances, high wet coefficient of friction materials, and pressure sensitive adhesives, as recited in claim 1.

Consistent with the dictionary definition, one skilled in the art of tampons would recognize an embossment as being a raised structure(s) formed by raising a surface of the barrel mechanically, such as with a die. Clearly none of the elements disclosed in Voss are embossments, as they are separately formed and affixed to the applicator barrel.

Therefore, it is respectfully submitted that claim 1, as well as claim 7 which depends from claim 1, is patentably distinguishable over the cited art taken alone or in combination.

It is respectfully submitted that this is a full and complete response to the Action and that claims 1 through 5, and 7 through 23 are patentably distinguishable over the cited art. Therefore Applicants respectfully request reconsideration and withdrawal of the rejections of these claims and passage of this application to allowance.

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A handwritten signature in black ink, appearing to read "Charles N.J. Ruggiero", written over a horizontal line.

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**DETAILED DESCRIPTION OF THE AMENDMENTS
TO THE SPECIFICATION AND CLAIMS**

IN THE SPECIFICATION

Please replace the paragraph beginning at line 9 on page 7 of the specification with the following rewritten paragraph:

--Fig. 8 is a perspective view of another embodiment of the tampon applicator of Fig. 1 having a concave fingergrasp area according to the present invention;[and]--

Please replace the paragraph beginning at line 13 on page 7 of the specification with the following rewritten paragraph:

--Fig. 9 is a perspective view of another embodiment of the tampon applicator of Fig. 1 having a convex fingergrasp area according to the present invention[.];--

Please replace the paragraph beginning at line 10 on page 12 of the specification with the following rewritten paragraph:

--In an alternative embodiment of the applicator of Figs. 1 through 5 of the present invention, at least one, and more

preferably a plurality, of gripping structures are disposed on the surfaces 30. While these alternative embodiments are discussed below with respect to Fig. 1, they can be equally applied to the fingergrip area of Figs. 2 through 5, 8[,] and 9. Examples of such are depicted in Figs. 10 and 13.--

Please replace the paragraph beginning at line 18 on page 14 of the specification with the following rewritten paragraph:

--It should be understood that the embodiments shown in Figs. 6 through 9, as well as all of the gripping structure embodiments described above, can be formed on the tampon applicator depicted in Figs. 2 through 5, as well. This is illustrated by example in Figs. 11, 12, 14 and 15.--

IN THE CLAIMS

Please amend claim 1 as follows:

1. (Amended) A tampon applicator comprising:

a barrel adapted to house a pledget therein and to receive a plunger therein, said barrel having a fingergrip area adapted to partially house and engage said plunger, said fingergrip area

having at least one substantially flattened surface with at least one gripping structure [other than a rib] selected from the group consisting of embossments, slits, grooves, louvers, perforations, lances, high wet coefficient of friction material, pressure sensitive adhesive, and any combinations thereof, wherein said fingergrip area has a reduced diameter relative to said barrel,

wherein said at least one substantially flattened surface and said at least one gripping structure provide gripping ability to overcome ejection forces applied to said barrel by said pledget and/or said plunger.

Please amend claim 5 as follows:

5. (Amended) The tampon applicator of claim 4, wherein said at least one substantially flattened surface is at least two substantially flattened surfaces, and wherein each of said at least two angled shoulder surfaces [corresponds to a separate one of said] are disposed adjacent to each of said at least two substantially flattened surfaces on said fingergrip area.

Please amend claim 10 as follows:

10. (Amended) The tampon applicator of claim 1, wherein said at least one gripping structure has a position selected from the group consisting of[:] tilted towards an outer surface of said at least one substantially flattened surface, tilted away from an outer surface of said at least one substantially flattened surface, and any combination thereof [of said at least one substantially flattened surface].

Please amend claim 11 as follows:

11. (Amended) The tampon applicator of claim 1, wherein [said fingergrip area and said plunger] the tampon applicator further comprises a plunger, and wherein said plunger and said fingergrip area have substantially the same cross-sectional shape.

Please amend claim 17 as follows:

17. (Amended) The tampon applicator of claim 16, wherein said at least one convex surface is at least two convex surfaces, and wherein each of said at least two angled shoulder surfaces [corresponds to a separate one of said] are disposed

adjacent to each of said at least two convex surfaces on said
fingergrip area.

Please amend claim 19 as follows:

19. (Amended) A tampon applicator comprising:

a barrel adapted to house a pledget therein and to receive
a plunger therein, said barrel having a fingergrip area adapted
to partially house and engage said plunger, said fingergrip area
having at least one concave surface with at least one gripping
structure [is] selected from the group consisting of[:]
embossments, protuberances other than ribs, slits, grooves,
louvers, perforations, lances, abrasive media, high wet
coefficient of friction materials, pressure sensitive adhesives,
and any combinations thereof, wherein said fingergrip area has a
reduced diameter relative to said barrel,

wherein said at least one concave surface and said at least
one gripping structure provide gripping ability to overcome
ejection forces applied to said barrel by said pledget and/or
said plunger.

Please amend claim 23 as follows:

23. (Amended) The tampon applicator of claim 22, wherein said at least one concave surface is at least two concave surfaces, and wherein each of said at least two angled shoulder surfaces [corresponds to a separate one of said] are disposed adjacent to each of said at least two concave surfaces on said fingergrip area.